

FILED

OCT - 3 2006

WILLIAM D. GUTHRIE
Clerk, U.S. District Court
By Deputy Clerk

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF OKLAHOMA

1. WAUHILLA McMAHAN,)
)
Plaintiff,)
v.)
2. THE UNITED STATES OF AMERICA,)
ex rel. Indian Health Service, an agency of the U.S.)
Department of Health and Human Services,)
)
Defendant.)

No. CIV 06 - 425 - KEW

COMPLAINT


Plaintiff Wauhilla McMahan states:

1. This action is brought pursuant to 28 U.S.C. §1346(b), the Federal Tort Claims Act, 28 U.S.C. §2671 *et seq.*, 28 U.S.C. 2401, and Oklahoma medical malpractice law.
2. The action was previously filed in Case No. CIV-06-279-RAW and dismissed by Plaintiff in a Notice of Dismissal Without Prejudice on September 11, 2006.
3. On August 17, 2004, Plaintiff was a patient of Alavaro Gonzalez-Fernandez M.D. and W.W. Hastings Indian Hospital in Tahlequah, Oklahoma, where the doctor performed cataract surgery on Plaintiff's left eye, causing Plaintiff to lose the eye.
4. W.W. Hastings Indian Hospital is operated by Defendant United States of America through the Department of Health and Human Services.
5. At the time of the surgery, the doctor was acting as the agent, servant and/or employee of Defendant United States of America, acting within the scope of his office or employment.
6. Plaintiff's injuries and loss of vision resulted from Defendant's negligence in that the surgery and care of the patient fell below acceptable medical standards. The doctor utilized improper procedures in the surgery, resulting in a choroidal hemorrhage and loss of intraocular contents, at which time surgery should have been terminated. The procedure was continued, resulting in the loss of Plaintiff's eye

*waver given
consent given*

7. Defendant United States of America was negligent in hiring, retaining and/or extending privileges to the doctor at the hospital.
8. As a direct and proximate result of the negligence of Defendant, Wauhilla McMahan sustained severe, permanent and progressive personal injuries, has and will suffer pain of mind and body, has and will incur medical expenses, and has been damaged in the amount of \$2,000,000.00.
9. Plaintiff has timely complied with the notice of claim provision contained in the Federal Tort Claims Act, having submitted her notice of claim to Defendant, the United States of America, on January 13, 2006, Claim No. 06-0136. Plaintiff's claims were deemed denied on or about July 22, 2006, six months after they were filed. 28 U.S.C. §2675.

WHEREFORE, Plaintiff prays for judgment against Defendant in the amount of Two Million Dollars (\$2,000,000.00), together with interest, costs and attorney fees, and for such further relief as this Court deems just and reasonable.



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